

PREVAILED

Roll Call No. _____

FAILED

Ayes _____

WITHDRAWN

Noes _____

RULED OUT OF ORDER

HOUSE MOTION _____

MR. SPEAKER:

I move that Engrossed Senate Bill 262 be amended to read as follows:

- 1 Page 1, between the enacting clause and line 1, begin a new
2 paragraph and insert:
3 "SECTION 1. IC 6-3.1-33 IS ADDED TO THE INDIANA CODE
4 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
5 JULY 1, 2008]:
6 **Chapter 33. Education Contribution Tax Credit**
7 **Sec. 1. The credit provided by this chapter applies only to**
8 **contributions made in taxable years beginning after December 31,**
9 **2009.**
10 **Sec. 2. (a) As used in this chapter, "contribution" means a**
11 **donation of cash, personal property, or services, the value of which**
12 **is the net cost of the donation to the donor or the pro rata hourly**
13 **wage, including benefits, of the individual performing the services.**
14 **(b) The term does not include activities that are a part of a**
15 **taxpayer's normal course of business.**
16 **Sec. 3. As used in this chapter, "educational improvement**
17 **organization" means a nonprofit entity that:**
18 **(1) is exempt from federal taxation under section 501(c)(3) of**
19 **the Internal Revenue Code; and**
20 **(2) contributes at least eighty percent (80%) of its annual**
21 **receipts as grants to a public school for innovative educational**
22 **programs.**
23 **Sec. 4. As used in this chapter, "eligible student" means a school**
24 **age student who:**

(1) is enrolled in a school; and

(2) either:

(A) qualifies for the federal free or reduced price lunch program established under 42 U.S.C. 1751 et seq.; or

(B) both:

(i) received a scholarship from an educational improvement organization or a scholarship organization in the immediately preceding school year or the immediately preceding term of the current school year; and

(ii) qualified under subdivision 2(A) in the first year that the individual received the scholarship from the educational improvement organization or the scholarship organization.

Sec. 5. As used in this chapter, "innovative educational program" means an advanced academic or similar program that:

(1) is not part of the regular academic program of a public school; and

(2) enhances the curriculum or academic program of the public school.

Sec. 6. As used in this chapter, "pass through entity" means:

(1) a corporation that is exempt from the adjusted gross income tax under IC 6-3-2-2.8(2);

(2) a partnership;

(3) a limited liability company; or

(4) a limited liability partnership.

Sec. 7. As used in this chapter, "qualified educational improvement organization" is an educational improvement organization to whom the department of education issues a certificate under section 14 of this chapter.

Sec. 8. As used in this chapter, "qualified scholarship organization" is a scholarship organization to whom the department of education issues a certificate under section 14 of this chapter.

Sec. 9. As used in this chapter, "scholarship organization" means a nonprofit entity that:

(1) is exempt from federal taxation under Section 501(c)(3) of the Internal Revenue Code; and

(2) contributes at least eighty percent (80%) of its annual receipts to a scholarship program.

Sec. 10. As used in this chapter, "scholarship program" means a program that:

(1) provides tuition to eligible students to attend a school located in Indiana;

(2) includes an application and review process to make awards to eligible students; and

(3) provides for the award of scholarships to eligible students

without limiting availability to only students of one (1) school.

Sec. 11. As used in this chapter, "school" means the following:

(1) A nonpublic school (as defined in IC 20-18-2-12) that:

(A) complies with all health and safety laws that apply to nonpublic schools;

(B) holds a valid occupancy permit if required; and

(C) certifies that it will not discriminate in admissions on the basis of race, color, or national origin.

(2) A public school (as defined in IC 20-18-2-15).

Sec. 12. As used in this chapter, "state tax liability" means a taxpayer's total tax liability that is incurred under:

(1) IC 6-3-1 through IC 6-3-7 (the adjusted gross income tax);

(2) IC 6-5.5 (the financial institutions tax); and

(3) IC 27-1-18-2 (the insurance premiums tax);

as computed after the application of the credits that under IC 6-3.1-1-2 are to be applied before the credit provided by this chapter.

Sec. 13. As used in this chapter, "taxpayer" means an individual or entity operating a trade or business that has any state tax liability.

Sec. 14. (a) The state board of education shall adopt rules under IC 4-22-2 to determine the eligibility of an innovative educational program or a scholarship program for purposes of this chapter.

(b) An educational improvement organization or a scholarship organization that seeks to become qualified by the department of education under this section must submit an application to the department of education that describes the organization's proposed innovative educational program or scholarship program. The application must be in a form prescribed by the department of education. The department of education shall review the application and then approve or disapprove the organization as a qualified educational improvement organization or qualified scholarship organization under this chapter.

(c) If an organization qualifies under subsection (b), the department of education shall notify:

(1) the organization; and

(2) the department of state revenue;

of the organization's qualification not later than sixty (60) days after the organization has submitted all of the information required under this chapter. The department of education shall provide an appropriate certificate to each organization that the department determines to be qualified under this chapter.

Sec. 15. Contributions to a qualified scholarship organization or a qualified educational improvement organization are not eligible for the credit provided by this chapter unless the qualified scholarship organization or the qualified educational improvement organization first submits to the department:

(1) information enabling the department to confirm that the organization is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code; and

(2) a copy of the certificate issued by the department of education under section 14 of this chapter.

Sec. 16. The department shall annually publish in the Indiana Register a list of scholarship organizations and educational improvement organizations that have complied with the requirements of section 15 of this chapter.

Sec. 17. (a) A taxpayer providing proof of a contribution to a qualified scholarship organization or a qualified educational improvement organization for an innovative educational program or scholarship program is entitled to a tax credit under this chapter in the taxable year in which the contribution is made. The amount of the credit for the taxable year is the least of:

(1) seventy-five percent (75%) of the total amount contributed during the taxable year by the taxpayer;

(2) fifteen thousand dollars (\$15,000); or

(3) the taxpayer's state tax liability for the taxable year.

The taxpayer must provide a completed application for the credit to the department at the time the taxpayer submits proof of the contribution.

(b) A tax credit not used in the taxable year the contribution was made may not be carried forward or carried back and is not refundable or transferable.

Sec. 18. If a pass through entity is entitled to a credit under this chapter but does not have state tax liability against which the tax credit may be applied, a shareholder, partner, or member of the pass through entity is entitled to a tax credit equal to:

(1) the tax credit determined for the pass through entity for the taxable year; multiplied by

(2) the percentage of the pass through entity's distributive income to which the shareholder, partner, or member is entitled.

Sec. 19. To receive the credit provided by this chapter, a taxpayer must do the following:

(1) Claim the credit on the taxpayer's state tax return or returns in the manner prescribed by the department.

(2) Provide to the department a copy of the donee's certificate issued by the department of education under section 14 of this chapter showing that the donee is a qualified scholarship organization or a qualified educational improvement organization.

(3) Submit to the department all information that the department determines is necessary for the calculation of the credit provided by this chapter.

The department may require a pass through entity to provide

1 information that the department determines is necessary for the
 2 department to calculate the percentage of the credit provided by
 3 this chapter to which a shareholder, partner, or member of the
 4 pass through entity is entitled.

5 **Sec. 20. (a)** The amount of tax credits allowed under this chapter
 6 may not exceed ten million dollars (\$10,000,000) in a state fiscal
 7 year. The amount used to provide tax credits for contributions
 8 from taxpayers to:

9 (1) scholarship organizations; or

10 (2) educational improvement organizations;

11 may not exceed seven million five hundred thousand dollars
 12 (\$7,500,000) of the total amount.

13 (b) The department shall record the time of filing of each
 14 application for allowance of a credit under this chapter and shall
 15 approve the applications, if they otherwise qualify for a tax credit
 16 under this chapter, in the chronological order in which the
 17 applications are filed in the state fiscal year.

18 (c) Whenever the total credits approved under this section equal
 19 the maximum amount allowable in any state fiscal year, a
 20 subsequent application received for that same fiscal year may not
 21 be approved. However, if any applicant for whom a credit has been
 22 approved fails to file the proof required under this chapter, an
 23 amount equal to the credit previously allowed or set aside for the
 24 applicant may be allowed to any subsequent applicant in the year.
 25 In addition, the department may, if the applicant requests, approve
 26 a credit application, in whole or in part, with respect to the next
 27 succeeding state fiscal year.

28 **Sec. 21.** A scholarship received by an eligible student shall not
 29 be considered to be taxable income for the purposes of IC 6-3.

30 **Sec. 22.** The department shall provide a list of all scholarship
 31 organizations and educational improvement organizations
 32 receiving contributions from taxpayers granted a tax credit under
 33 this chapter to the general assembly in an electronic format under
 34 IC 5-14-6 before July 1 of each year."

35 Page 2, after line 11, begin a new paragraph and insert:

36 "SECTION 3. [EFFECTIVE JULY 1, 2008] IC 6-3.1-33, as added

- 1 **by this act, applies only to taxable years beginning after December**
- 2 **31, 2009."**
- 3 Renumber all SECTIONS consecutively.
(Reference is to ESB 262 as printed February 15, 2008.)

Representative Behning